

Testimony before the House Committee on the Judiciary of the State of Michigan

January 23, 2008

I want to thank Representative Condino for allowing me to submit my testimony in writing as traveling to Lansing from my home in Cedar Springs would be difficult for me in a wheelchair in wintertime. However, missing the opportunity to speak to you all in one group at the same time on this extremely important topic is something I simply could not allow to happen.

I feel that a small history lesson would be helpful for those of you who were not a member of this body when our state made drastic changes to the laws affecting children. For most of the 20th century, children who committed crimes were handled by the juvenile courts. They were sheltered and given the treatment they needed to find a path back to living the way they were expected to do and being law abiding and contributing members of society. However, a **national** rise in juvenile crime fueled further by media reports led this legislature to amend our laws such that it was now possible for a child of ANY age to be sentenced in the same manner as an adult up to and including life without parole. Essentially a child as young as 12 who committed murder could be sentenced to die in prison.

Right now, the way laws are situated in THIS state the child in this picture under the right circumstances could be sentenced to Life without Parole. Moreover, no judge could stop it. They are powerless.



I want to say at this point that I am not an expert on child psychology. Although, I have taken a course in the topic, which most lawyers who pass laws like this have not. However, I believe you do not need education in psychology or a law degree to come at this with some common sense. In this state today, a child cannot:

- Purchase or consume alcohol (some religious observances for consumption are allowed)
- Purchase, possess, or use tobacco of any kind
- Drive a car
- Vote in a state or national election
- Hunt until age 12 and then only if they have taken a hunters safety course.

Why is it that this is so? It is because we believe that a child does not have the cognitive ability to make decisions about the appropriateness of these actions or to be responsible to be entrusted with the privileges of voting and driving or hunting. Yet, we think that they do have the ability to reason such that if they commit a so-called “adult” crime they need to be handled in the adult system. The leap of logic that this requires baffles me. If a 12 year old is capable of adult reasoning such that they could and should be sentenced to Life Without Parole then they also should be allowed to vote, drive a car, purchase and consume alcohol and tobacco all at the tender age of 12. Yet no legislature in this country would EVER do that. If they did, I guarantee that any person who voted for such a thing would be removed from office or at the very least voted out in the next possible election. The very idea of even considering doing such a thing is ludicrous and would anger the mildest mannered person to want to protest. Yet, when we sentence CHILDREN to Life without Parole, it is just as crazy a thing to do but up until recent history, nobody has seen fit to do anything.

I could go on and on with plenty of statistics and anecdotal evidence but I am not going to waste the time because I have attached a report I wrote for my masters level criminal procedure course at Kaplan University that is far more eloquent then anything I could reproduce in a few words here. Therefore, I will leave you with just two more thoughts.

First, this year saw our budget process turn into a protracted philosophical mess that threatened to stop our government from functioning at all. According to the best estimates I could find and actually understand, we are going to spend 4.5 BILLION dollars in the next fiscal year in the Department of Human Services with a major portion of that being used to pay for children in the system sentenced to LWOP and that isn’t counting the people already transferred to adult prisons which happens at age 17 or 18 in this state, which is being paid out in the Department of Corrections budget. Regardless of the actual numbers, nobody can dispute that we are spending a massive amount of money to house children sentenced to Life without Parole. In my opinion, that is wasted money. We do not get anything for it. Some will argue we get peace of mind that the offender is behind bars and will not harm anybody. The majority of the people sentenced as juveniles to Life without Parole committed ONE crime. If one actually bothers to check into the circumstances of that crime the majority of the time, it is such that the child who committed the offense if properly rehabilitated would never offend again. So just what are we spending all this money for?

Lastly, our children are OUR future. Yours and mine. It is high time we stop throwing them away like we set our garbage on the curb to be picked up. Our children are not garbage. They are precious gifts from GOD and just because they do something bad, even something we cannot imagine ever doing ourselves, does not justify throwing them away.

I know I said lastly up there but I would be remiss if I did not tell you about my friend Christopher Pittman. Christopher grew up in what the professionals would say was a broken home. His mother abandoned him along with his sister, showed up one day, only to abandon him again. With these problems going on all around him Christopher threatened to commit suicide. His father did not know what to do and took him to a residential treatment program. They put him on Paxil. Within days of this he complained that his skin felt like it was burning, His father seeing the error of his ways got Christopher out of the place but further problems ensued and Christopher promptly ran away. He was returned to his home. His parents called the grandparents, essentially where Christopher was headed. They came down to Florida from South Carolina and it was decided they would take Chris to their home for a while to see if things were not better for him there. Once there he ran out of the Paxil that the facility had given him and so his grandmother took him to a local family doctor. The doctor wanted to help them out because they did not have a lot of money but he did not have any Paxil samples so he gave them samples of Zoloft. He wrote the instructions on the outside of the bag. This story is getting very long so I will skip ahead to the tragic finally. One night in the grips of some kind of Zoloft induced manic state Christopher shot and killed his grandparents. He is currently serving a 30-year sentence in South Carolina. Please let us put a stop to the horrendous practice of sending our children away to prison for Life without the Possibility of Parole. Thank you!

Sincerely,
Steve Schofield

Executive Director
Michigan Juvenile Justice Project
www.mijuvenilejustice.org

40 years after Gault, still searching for true justice
By Stephen S. Schofield
CJ 500 Term Paper – Submitted on May 21, 2007

TABLE OF CONTENTS

- I. Abstract
- II. Introduction
 - a. The “nature” of juveniles
 - b. The Landscape before Gault
 - c. In Re Gault – The source of juvenile rights
 - d. Gault at 40: 40th anniversary of the landmark decision
- III. Juvenile Justice Reform – The pendulum swings
 - a. The response to youth violence
 - 1. Columbine happens
 - b. Zero Tolerance Laws
 - c. The decision to charge
 - 1. Trying juveniles as adults
 - d. 6th amendment right to a “speedy” trial
- IV. Post-Arrest Issues
 - a. Interrogations
 - 1. Unreliability of Juvenile Statements
 - b. Miranda Waivers
 - 1. Misunderstanding *Miranda*
- V. Juveniles and Pre-Trial Release
 - a. Bail
 - i. Juveniles are indigent by nature
 - b. Release on recognizance
 - c. Preventive Detention
- VI. Some case studies, and suggestions for reform (of the reforms)
 - a. Christopher Pittman: Justice gone terribly awry
 - 1. 6th amendment right to a “speedy” trial
 - b. Suggestions for reform (of the reforms)
- VII. Conclusion
- VIII. References

Abstract:

The year 2007 marks the 40th anniversary of the Supreme Court's landmark decision in the case of *In re Gault*. While juveniles have made strides towards better treatment in court this progress took a giant step backwards during the 1990's and that continues today. This paper seeks to show what the landscape was like in the years prior to 1967 for children accused of wrongdoing and the reforms that have been instituted along with what still needs to be done which includes a reform of the "reforms" that took place in the 1990's.

The "nature" of Juveniles

Juvenile. Webster's Online Dictionary defines the term in this way, first an adjective, "of or relating to or characteristic of or appropriate for children". It goes on, "displaying or suggesting a lack of maturity". Lastly it is also a noun, meaning "a youthful person." Legally a juvenile is defined as someone under the age of majority. In most states that age is eighteen. Please I ask you to keep this in mind as you read through the various topics in this paper. We will revisit it specifically later on.

Why does any of this matter? I think a better question would be why **should** any of this matter? This paper will seek to explain why the pendulum of justice has swung from what **might** have been too lenient to what I am now certain **is** too harsh.

Why too harsh you may ask. To answer that lets take a look at the research that exists regarding children and brain development.

The organization "Justice for Juveniles" has a website at justiceforjuveniles.org and there the organizations' mission statement states in part, "always keeping in mind that children are never adults." Such a seemingly simple statement but how often in society today have we violated that very simple principle?

It is not just charging decisions I find fault with. No, it is a whole range of issues beginning with the all important decision to charge a child as an adult and runs the gamut

across the spectrum of legal rights that adults enjoy without a doubt, but that courts repeatedly trample when it comes to our most vulnerable population, our children.

So why is it wrong to charge a child as an adult? Let me state at the outset of this discussion about the decision to charge a child as an adult that in my opinion there is only one circumstance where it is appropriate to charge a child as an adult. That circumstance is when the child has an extensive juvenile record and through repeated contacts with the juvenile system and despite services being provided to the child and the family no progress is being seen in their behavior. Then and only then is it appropriate for a child to be charged as an adult, and even then only if the child is older than 14 years of age.

Extensive research has been done into the brain development of children. That research has shown that the area of the brain's frontal lobe located just behind the forehead, called the prefrontal cortex, is essentially the CEO of the body (<http://www.abanet.org/crimjust/juvjus/Adolescence.pdf>, 2004). It controls cognition, allows one to prioritize thoughts, plan, and control impulses (2004). The brain goes through changes during adolescence the same as the rest of the body. As a result of new technology, researchers have come to find that the adolescent brain is **not** as developed as previously believed (2004).

Advances in Magnetic Resonance Imaging (MRI) has allowed for three dimensional scans of children's brains to be taken without use of radiation so that more scans can be done and the changes tracked as the child progresses from being a child to becoming an adult.

Without this becoming a science paper instead of a legal one, briefly let me explain what the research specifically has found. Two major issues have been brought

forth. First, teenage brains experience an over production of something called “gray matter” the brain tissue that does the thinking. This is followed by a period in which the brain “prunes” or trims away much of this gray matter at a rapid rate. This is similar to the pruning of a tree, which is done to stimulate growth and health. This pruning in the brain is accompanied by myelination a process in which white matter develops. This white matter is fatty tissue that serves as insulation for the brains circuitry. This makes the brains functioning more precise and efficient.

Second, adolescents go through tremendous hormonal and emotional change. In boys this is an increase in testosterone levels which research has shown can lead to aggression. Due to these physical and hormonal changes the actual age of biological maturity is actually closer to 21 or 22 instead of the age of 18 we place it at in our society today.

The Landscape before Gault

To gain the proper perspective we must travel back in time prior to 1967 when the United States Supreme Court decided the landmark case of *In re Gault*.

“Under our constitution, the condition of being a boy does not justify a kangaroo court.” (In re Gault, 1967) It would be impossible for me to so eloquently sum up in a few words what the law was like for children prior to the Gault decision.

The major issue with juvenile justice administration prior to the handing down of *In re Gault* in 1967 was access to counsel. The issue that came up repeatedly was that a juvenile delinquency proceeding was not criminal and therefore children in such a case did not need an attorney. This came from the fact that the juvenile justice system was intended to reform or rehabilitate a child rather than to punish. However, one must only

look to the potential consequence of being found delinquent, juvenile detention or a state reform school, to grasp that a child's liberty is at just as much risk in a delinquency proceeding as an adult would be in a criminal proceeding. So then why would we not believe that counsel should represent a child?

Children were not seen as defendants in a proceeding that put them in jeopardy. Courts repeatedly ruled that they had no rights. In *Application of Gault*, the 1965 Arizona Supreme Court ruling that was reviewed in *Gault*, the court held that juveniles were adequately protected by Arizona's laws and did not need protection of an attorney. There reasoning, juvenile delinquency proceedings were not criminal in nature and they concerned the care of the child and not the punishment. In Indiana it was worse yet. In a case cited in briefs of *Gault* called *Akers v State* (51 N.E.2d 91, 1943) the Indiana appellate court ruled that youth brought before the courts in a delinquency proceeding were not entitled to the same procedural protections as defendants in criminal court. This went even as far as they were not entitled to be advised of the ramifications of pleading guilty. I for one would want my child told what pleading guilty meant, and if I couldn't explain it to them adequately I would hope that they had an attorney or that the judge themselves would explain the nature of the charges and what pleading guilty meant.

One argument that is conceivable to explain the attitudes that were prevalent in the era before *Gault* is that parents were different then. In the 1940's and 1950's children and parents were much more in contact with one another. Generally there were two parents in the home and at least one was stay at home usually the mom. This meant that if a child were to get into some sort of trouble the parent could be called and get to the child reasonably quickly. Unfortunately, that is no longer the case. Parents are often divorced

living in two different states. The child is brought up in a single parent home where the parent spends the majority of the day at work and if the child were to be in some sort of trouble the parent might not be able to get off work to deal with it. Furthermore, that is assuming that the parent is a caring parent. It is unfortunate but all too often children are now living in neglectful and sometimes even abusive situations and should the child get into trouble the parent abandons them. The bottom line is that in today's era it is no longer practical to just assume that a parent is going to stand by and protect their children's rights. In many cases it is unclear if the parent would even know what rights to protect. This is the era that was beginning to emerge in 1967 when *In re Gault* was decided.

While access to counsel was a major issue, and competent counsel continues to be an issue to this very day, there were other issues of serious flaws in procedural due process in the era before *Gault*. One need go no further back than look at the case that *Gault* was reviewing to find adequate evidence for such a claim. The Court in *Application* said, "We agree with the scholarly opinion of our appellate tribunal and hold that there is no right of appeal from a juvenile court order, nor does the general appeal statute apply." (407 P.2D 760, 1965) So then what is the remedy if one believes they received an incorrect decision in the juvenile court? The court continues, "We note that our Constitution gives to the superior court exclusive original jurisdiction in all proceedings and matters affecting delinquent children." (1965)

The superior court has original jurisdiction, who had appellate jurisdiction? The law made no mention of that. As near as I can tell from my review of their statute the closest thing you could get was a rehearing, which would be by the same judge. Unless

you turned up drastically new evidence why would the judge even agree to rehear your motion much less actually change his decision.

In *Akers v State* the Supreme Court of Indiana said, “The unequivocal mandate of the Legislature that we shall not reverse the judgment of a juvenile court except in the event we are of the opinion that the finding of facts is insufficient to support such judgment or that the evidence is insufficient to sustain the facts as found, precludes us from considering, as grounds for reversal, any question raised by the appellant's first assignment of errors.” (1943) In short, juveniles have no right to due process.

In re Gault – The Source of Juvenile rights

Quoting the decision in *Kent v United States* the court wrote, “it would be extraordinary if our Constitution did not require the procedural regularity and exercise of care implied in the phrase ‘Due Process.’” So, what exactly does that mean? The court went on. Due process means:

- Adequate written notice. That notice must inform them “of the specific charges they must meet” and must be given “at the earliest practicable time and in any event sufficiently in advance of the hearing to permit preparation.”
- In such proceedings the child and his parents must be advised of their right to be represented by counsel. If they are unable to afford counsel then it should be appointed for them at the state’s expense. Simply stating that you are unaware of the right to counsel is not a relinquishment of your right.
- The Fifth Amendment right against self-incrimination applies to juveniles. The court stated that for the purposes of delinquency proceedings where the juvenile may be committed to detention or commitment to a state school the proceedings must be regarded as criminal with respect to statements made by the juvenile. No statement made by the juvenile can be used in a proceeding against them unless a determination is made on the record that the juvenile knew he was not obliged to speak and would suffer no penalty for remaining silent.
- Absent a confession a juvenile must be afforded the right to confront the witnesses and have sworn testimony and cross-examination.

To completely understand why these things are important it is necessary to review briefly just what happened to the juvenile in the case of Gault, who was he and why does any of this matter to us?

Gerald Gault was a 15-year-old youth who resided in Arizona, its ironic to me that so was Miranda similarly situated in the state of Arizona and he too had to go to the Supreme Court in order to get his rights properly interpreted, but I digress. Gault and his friend, Ronald Lewis was taken into custody at about 10 AM on June 8, 1964 by the sheriff of Gila County, Arizona. This was undertaken because of a complaint made by a neighbor who claimed that Gault and others had made a telephone call to her home in which they made unsolicited and lewd comments. At this time Gerald was still subject to six months probation due to his being in the company of another boy who had stolen a lady's purse in February of 1964. (387 US 1, 1967)

When Gerald and his friend were taken into custody Gerald's parents were both at work. No notice was left at the home that Gerald had been taken into custody. When his mother returned home from work at approximately 6 PM that same day Gerald simply was not there. At this point the boys' older brother was sent to the trailer home of the other boy and upon arrival there learned of the fact his brother was now in custody. He accompanied his mother to the detention home where they were told, "why Jerry was there" and that a hearing would be held the next day.

On June 9th, the deputy probation officer filed a petition with the court. This was not served on the Gault family. Nobody in the family saw this until a habeus corpus hearing in August. The petition was entirely formal and made no factual basis upon which it was based. Only that the minor was under 18 and needed protection of the court.

This begs the question, protection from what? It did go on to say that the minor was a delinquent minor but gave no mention of the offense upon which this determination was to be made.

At the hearing the probation officers were present in the judges chambers, the complainant Mrs. Cook was not present. Mr. Gault, the boys' father was out of town working. No one was sworn at the hearing. No transcript was made. No memorandum of what transpired at the hearing was prepared. The only record of anything that went on at the juvenile court hearing was testimony taken at the habeus corpus hearing. At the conclusion of the hearing before the juvenile court the judge said he would "think about it". Three days later Gerald was released. There was never any explanation on the record of why he was held for 3 days and why he was suddenly released.

Mrs. Gault on the day Gerald was released received a note from the probation officer stating that another hearing would be held on the 15th. Gerald's mother requested that Mrs. Cook, the complainant, be present at the hearing. The judge stated she did not have to be even though he had not spoken to her, and the only person who had was Officer Flagg and that was only once. At the conclusion of the hearing on the 15th Gerald was committed to the state industrial school for the period of his minority, until age 21, unless he was discharged sooner by due process of law.

There are a few details that are in the opinion that I have left out for expediency's sake but the point to be made is that Gerald Gault was accused, arrested, questioned, tried, convicted and sentenced all within one week. Without the benefit of an attorney, without even his parents being present, he did not get to confront who was accusing him. There was no record made for any subsequent appeals. The record produced at the habeus

corpus hearing in August was based on the memory of the parties involved. This is what stood up as justice for children prior to the Supreme Court's ruling in *Gault*

Gault at 40: 40th anniversary of the landmark decision

2007 marks the 40th anniversary of the Supreme Court decision in *In re Gault*. Despite the Supreme Court's clear mandate that ALL children accused of delinquent acts have the RIGHT, not the privilege, of competent defense counsel, far too many children are still appearing in court without well trained, well resourced, legal defense counsel. Some still with none at all. The National Juvenile Defender Center will use 2007 to highlight these problems. The remainder of this paper will do the same thing as well as attempt to explain the possible cause and also give suggestions for reforming the system to make it work as it was intended to.

The case of Corey Bauer shows just how far we still have to go to achieve what was intended to be achieved by *In re Gault* **40** years ago this week.

Corey Bauer was just 11 years old when he was caught shoplifting a pack of cigarettes from a grocery store. According to his mother, his grandmother had just died and the boy was having a rough time. He did not fight the charge and was given unsupervised probation. Unfortunately, he violated that probation by skipping class, smoking, and inadvertently carrying a pair of scissors through a metal detector (Pearle, 2007).

Corey was sent to Louisiana juvenile court. They were not told that Corey had the right to an attorney. In direct contrast to being informed of the right to an attorney, the police and other personnel did the exact opposite. They convinced Corey's mother that

they would help her to get Corey “back on track” and that a lawyer would “slow things down”(2007).

Grace Bauer, Corey’s mother, felt like the professionals were helping Corey. That the problems her son was having were because of her bad parenting. However, after time spent in juvenile detention Corey seemed actually worse. One night, Corey and some of his friends were caught breaking in and attempting to steal the radio from a car. Since Corey also had some illegal drugs, Xanax, on him he attempted to conceal it by swallowing the pills. While in a drug induced state Corey was interrogated for hours, without an attorney present and according to what Corey told his mother later, he told the police “everything”(2007).

Corey’s probation officer recommended state secure care for him. According to his mother she was told he would receive mental health and substance abuse treatment, as well as education to help him to get back on track. When she visited him at the Tallulah Correctional Center for Youth she expected to find a treatment facility. What she found, razor wire, brick buildings, security checkpoints and boys in orange jump suits. Her son, 14-year-old Corey, had a boot print on his rib cage, a black eye and a knot on his forehead (2007). This was the “treatment” her son was to receive?

40 years after In re Gault was decided to change how our children are handled in the criminal justice system, Corey Bauer and others like him are still being abused by the very system that is supposed to protect them.

Juvenile Justice Reform – The pendulum swings

According to the National Center for Juvenile Justice, the juvenile crime rate, as reported by Violent Crime Index, was at its lowest since 1980, and 47% below its 1994

high. In sharp contrast the number of juveniles that were themselves murdered in 2002, was nearly 1,600. (<http://www.ncjrs.gov>, 2004) So why then does there seem to be a strong opposition to reforming the laws as they pertain to our children and how they are handled in the criminal justice system?

I believe it can be explained by one very simple statement. Bad news gets press. To state it another way, the press covers it when children do something violent. So the public perceives the problem to be worse then it actually is and they demand action from their elected officials. Then an interesting phenomenon takes place. It is called politics.

The response to youth violence

April 20, 1999. In a town called Littleton in the state of Colorado, Dylan Klebold and Eric Harris embarked on an event that would change the course of justice for juveniles across the country. Not even the two murderers, Klebold and Harris, could possibly have known that their single act of violence would catapult people into a frenzy that wouldn't stop until legislatures all across the United States had responded to it.

The problem, it went too far. Today in America, children as young as 12, are being charged as adults when they commit certain violent crimes. It does not matter if it is their first offense. It is not being taken into account their backgrounds, their lives at home, are they on a medication. None of these factors are being looked into before a charging decision is made.

The second thing that happened was much less visible. However, I had a front row seat as a member of my local school board. What is it I'm talking about? Zero tolerance laws.

Zero Tolerance Laws

So you are now probably asking yourself, what does he mean by zero tolerance laws? Let me briefly explain.

As a response to Columbine, the school shooting case I discussed earlier, state legislatures panicked. They did not want what had happened in Littleton Colorado to happen in their states. So, they passed what came to be known as zero tolerance laws.

In the blink of an eye, playground fights over games of tether ball which used to be handled by separating the participants and maybe sending them home to cool off for a day or two now was considered an assault and had to be handled with expulsion. Other situations that now warrant expulsion, bringing a weapon to school, which I do not necessarily have a problem with except that an ordinary butter knife in some states could be considered a weapon. Or how about a Boy Scout knife, or a hatchet kept in a high school student's car because it was used on weekends. All of these now are considered weapons and no matter if the student uses them or not simply possessing them at school is grounds for expulsion. I realize that Columbine was a horrific event and I would never want anything like it to occur in my school but doesn't common sense have any place in society today? We worry about what our children are bringing to school but we have no problems issuing concealed weapons permits as a 2nd amendment right to bear arms.

The decision to charge

The decision to charge a defendant regardless if it is an adult or a juvenile, with a crime, falls within the sole discretion of the prosecutor. There are three reasons that a decision to charge someone may be improper. They are first, unfair and selective. Second, prosecution is pursued for vindictive reasons. Finally, prosecution is pursued in

disregard of the legislative intent (Worrall, 2007). It is difficult to state that a decision to charge a child as an adult would fall within any of these categories. Obviously it would not fall within the last category because the legislature expressly allows for it. The second reason, vindictive reasoning, could possibly be used to attack a prosecution of a child as an adult. However, generally asking a juvenile court to “waive” the child up to adult court must occur before these prosecutions can take place. It is a rare case when the prosecutor can directly charge the child as an adult.

Traditionally, waiver decisions were handled on a case-by-case basis. In this process the judge would review the individual child’s situation and make a determination based on likelihood of rehabilitation. Unfortunately, the more recent trend has been for state legislatures to remove this discretion from judges and mandate that in certain cases children be waived out of the juvenile court up into the criminal adult court (<http://www.pbs.org/wgbh/pages/frontline/shows/juvenile/stats/states.html>, 2005).

In 1994, 11,700 cases were transferred. In 1997, the most current statistics available to the author’s knowledge, the number had fallen to only 8400. However, that was before the 1999 Columbine incident.

Post Arrest Issues

The issues dealing with interrogation of juveniles and waiving Miranda rights by juveniles are so intertwined that while they are listed as two separate topics in the outline of this paper they really can not be separated and must be discussed together. However, each issue does have one specific issue related to it. The unreliability of juveniles’ statements related to interrogations and misunderstanding Miranda related to waiving Miranda rights.

In re Gault had this to say of juvenile interrogations:

“If counsel was not present for some permissible reason when an admission was obtained, the greatest care must be taken to assure that the admission was voluntary, in the sense not only that it was not coerced or suggested, but also that it was not the product of ignorance of rights or of adolescent fantasy, fright or despair. (Krzewinski, 2002)”

According to Krzewinski, juveniles face two major issues as it pertains to interrogation. First, does a juvenile have the capacity to understand their fifth amendment right against self-incrimination as it is explained to them in the standard Miranda warning? A related concern is, assuming the child understands their rights, will they successfully invoke them when all alone in a small interrogation room with adults posing accusing questions at them (2002).

The second piece of this, that even if a juvenile understands their Miranda rights and gives a statement that is considered, “knowing, intelligent and voluntary” it may not be reliable because of the nature of juveniles to be incapable of adult reasoning, as well as susceptibility to suggestion, and a reasoning system that adults do not understand (2002).

Unreliability of Juvenile statements

Everybody who works in the juvenile justice system knows about the case of Ryan Harris. In 1998, two boys aged 7 and 8 were charged with the murder of the 11 year old girl. It was horrifying to imagine that children so young could do something so brutal. However, months later, the charges were dropped. Why you may ask. DNA tests on the semen found on the young girls clothes did not match either of the boys. Instead, it matched an adult male. So, just what were the charges based on then? The charges were

based on a confession given by the boys to a Chicago police detective that they had hit the girl on the head with a brick in order to steal her bicycle (2002).

This was not the first time that the detective on this particular case had managed to elicit a false confession. Four years before Detective James Cassidy elicited a similar confession from a ten year old. The boy was later charged and convicted with murdering his eighty-four year old neighbor. The charge and conviction were almost entirely based on the confession. The boys' fingerprints were never found inside the victim's home, despite the fact the house was ransacked. A bloody shoe print and palm print did not match the boy. Furthermore, the evidence showed that the one hundred and seventy-three pound victim was found bound with a telephone cord around her neck, arms and hand. There was also evidence she had been dragged. The "confessed" assailant was ten years old and weighed all of 80 pounds at the time of the crime (2002).

If this were a psychology paper I would go into more detail into the whys and how's that these two events I described occurred. However, for our purposes all we need to know is that these two cases are documented and that they did occur. The implications of them occurring is that it shows that juveniles are very susceptible to suggestion. It is possible for them to believe something if they hear it enough. One does not need to watch Law and Order too many times to know that police officers when they believe they are on the right track will stop at nothing to get what they are after. After all, what is a better piece of evidence then a confession?

Juveniles and Pre-Trial Release

The last substantive topic to be reviewed before I go into some case studies and suggestions for what needs to change in the juvenile justice system is the topic of pre-trial release.

Pre-trial release usually can take one of three forms. First, and probably the most common is release on bail. In this situation the court receives a deposit from the defendant in exchange for them being released from jail. The purpose is to assure the court that the defendant will be present for hearings and at trial. The second most common is release upon one's own recognizance. Basically this is just a promise or the defendant's word that they will indeed return to court for all hearings and for trial. The last option is what is known as preventive detention. Sometimes a defendant's crime is so heinous and the evidence of their guilt so high that for the community's safety the defendant is held without bail.

When discussing the issue of bail as it pertains to juveniles one must understand that most juveniles especially the particularly young ones do not have their own money to put up as bail for themselves. Furthermore, depending upon the juveniles familial circumstances they may not have access to bail from their families. A third possibility as it pertains to juveniles is that while the family may want to assist the juvenile in securing their release they themselves may not have the means of paying a high bail. This in effect can force the juvenile to remain in custody even if the judge is amenable to setting bail.

So what are the criteria a judge is supposed to address when making a bail determination? I will list the criteria and then discuss them one by one. First, is the defendant a flight risk? Second, the level of danger, that is the perceived threat the defendant poses to society. Third, is the accused's financial status.

The US Supreme Court in *Stack v Boyle* declared that the purpose of bail is to assure the defendant is present at trial.

“Like the ancient practice of securing the oaths of responsible persons to stand as sureties for the accused, the modern practice of requiring a bail bond or the deposit of a sum of money subject to forfeiture serves as additional assurance of the presence of an accused...Since the function of bail is limited, the fixing of bail for any individual defendant must be based upon standards relevant to the purpose of assuring the presence of that defendant. (342 U.S 1, 1951)”

This does not allow a judge to set an unrealistically high bail amount however. The eighth amendment specifically admonishes against excessive bail. “Excessive bail shall **not** be required.” All this begs the question just what is considered excessive. At this critical juncture the author of this paper would suggest that just what might be perfectly allowable for an adult is excessive for a juvenile. That is because a juvenile on his own or her own are indigent. They have no means by which they themselves can pay any amount of bail. For a child of ten years old as in the case of the falsely accused Chicago boy, one hundred dollars would not have been possible for him to pay on his own.

The second criterion on which a decision for pretrial release is made is the level of danger the accused poses to society. The issue of dangerousness of a juvenile was discussed in the case of *Schall v Martin*. The argument on appeal in that case was that the pretrial detention of the juvenile amounted to punishment without the benefit of trial. However, the Supreme Court said that the government could only be punishing someone when the court's intent is to punish. I agree with the author of our text when he says that given the inherent problems with predicting criminal behavior that argument is suspect.

The final criteria by which the judge can legally make a determination about pretrial release are the financial status of the defendant. I believe that this criterion is fairly

self-explanatory. It deals with the ability of a defendant to pay any bail amount set. Previously this was addressed as to a juvenile defendant. They rely on their families' ability to pay not on their own ability. Furthermore, a poor person who has strong family ties and ties to a community is far less likely to flee than does a rich defendant with no community or family ties (322 F Supp 38, 1970). All too often and with very unfortunate results the only criteria that is truly considered or if all are considered this particular factor is weighted far too heavily, is the factor dealing with the crime itself. Concern over the victim's family and how they will feel if the accused person is released is taken into account which I do not believe should ever be a factor in a bail decision but it does enter in.

Some case studies

I have personally followed the plight of young Christopher Pittman since sometime in 2005. The information put forth below is taken from numerous sources. The majority from www.christopherpittman.org and www.justiceforjuveniles.org. His trial and subsequent conviction and sentencing were played out to a national audience on Court TV. I would like to thank the persons who maintain those websites as without them doing so much of the information about Christopher's very important story that needs to be told over and over again would not be available to the public.

Christopher Pittman was only 12 years old when he did the unthinkable. He shot and killed his grandparents as they lay sleeping in their bed. The grandparents he adored. Prior to this time young Christopher had never been in trouble with the law. Now after he shot and killed them he burned the house down and fled. To the casual onlooker this

would seem to be the case of a bad kid who society could do nothing for. However, the reality of the situation could not be further from what it seemed.

Christopher resided in Florida with his father and sister. His mother who would later reappear abandoned him at a young age and came back into his life only to abandon him once again shortly before the incident with his grandparents happened.

Christopher was going through adolescence and so this process on his brain and body only served to further his troubles. A few weeks before the shooting Christopher was sent to a facility where he was placed on the prescription drug Paxil. While there he complained to family members of the effects the drug seemed to be having on him. His father would subsequently remove him from the facility. Christopher would runaway to South Carolina where his grandparents lived. After being returned back to his father his grandparents came to Florida and it was decided that it would be best if Christopher went to live with them for a while.

When Christopher had only been there for a couple of weeks his samples of Paxil ran out and so his grandmother took him to a local doctor. The doctor knew Chris's grandparents weren't made of money so in an effort to help them out he endeavored to give them samples. However, he did not have any samples of Paxil so he gave them samples of the prescription anti-depressant drug Zoloft. He wrote the instructions for how the drug should be given to Chris on the bag and sent the aging grandmother and the young adolescent boy off.

The night of the incident Chris went to choir practice with his grandparents and it was reported that he was agitated and got into trouble for kicking at the back of one of the

pews. Christopher went outside and later on the way home from the evening they stopped along the way to view the sunset. The picture that was taken evidences this.

Prosecutors would have you believe that Christopher was paddled by his grandfather or at least threatened to be paddled and that was what led to the shooting. However, it seems to me that the picture taken on the way home from the evening at the church would show that things had smoothed over to some extent. Regardless, that night Chris loaded a shotgun and shot both of his grandparents as they lay sleeping in their beds.

When Christopher was found wandering in the woods he was taken to the police station where the police would tell you that they babysat him while things were being investigated. However, all the evidence points to the fact that the police at the very least suspected that Christopher had something to do with the incident.

At this point, one must begin to analyze what if any rights Christopher had under the constitution. Remember, In re Gault said that juveniles are entitled to the same rights as adults. It has been thought by some that *Miranda* warnings apply whenever the police question a suspect. However, that is not true. The Supreme Court has said that *Miranda* only applies when a person is in custody. Chris had not been arrested officially. So was he in custody when the police claim they were babysitting him? The Supreme Court said in *Berkemer* “the only relevant inquiry [in analyzing the custody issue] is how a reasonable man in the suspect’s position would have understood his situation. (468 US 420, 1984)”

Analyzing with the standard announced in *Berkemer*, given a 12 year old of average intelligence for his age and given the circumstances as they were with him also

being under the influence still of a powerful psychoactive drug such as Zoloft, one can only come to the conclusion that Christopher probably believed he was in custody. So he should have been given his Miranda warnings. However, he was given them but he also promptly waived them and there is some question as to whether he actually understood that he was not obligated to do so.

Christopher's story is a long one and this paper's length requirements do not permit me to do it proper justice however, the short version of the story is that Christopher based a lot upon the "confession" he gave to the police was convicted of First Degree murder. His trial counsel while well meaning and full of energy and drive were actually tort lawyers who offered to represent Christopher pro bono. They did the best they could but criminal trials need criminal lawyers.

The prosecution without any actual evidence overcame a presumptive burden that a 12 year old is incapable of forming the requisite mental intent for first-degree murder. What that burden actually required of the prosecution was for them to prove beyond a reasonable doubt that Christopher Pittman was somehow more sophisticated than all other 12 year olds.

To finish up this story, Christopher is currently serving 30 years in an adult facility in South Carolina. His case was presented to the South Carolina Supreme Court who certified it for a direct appeal to them and he is now awaiting their decision. Largely it is the presumption that I spoke of and the fact it took the state of South Carolina nearly 4 years to bring Chris to trial that are at issue in the appeal. The delay was such that the 90 lb skinny short 12 year old had grown into a 6'2" 16 year old sporting the beginnings

of a mustache. The 12 year old who committed the crime was not the person judged in that courtroom.

Suggestions for reform of the reforms

So I've spelled out the problems and they are many. Chris Pittman being sent away for 30 years because of what a drug did to his ability to reason on top of what adolescence had already done. John Silva, I would have loved to tell you more but he is serving life for murder he committed at 14 while others in the same state are doing far worse and getting far less time. So what do I suggest for reforming the system? To put it simply, we must restore common sense. We must restore to our judges the discretion we once thought they were capable of exercising.

Some more concrete suggestions, videotape or at the very least audio tape all interrogations of juveniles. Make sure that juveniles have at the very least an interested adult when they are being questioned, and at best a qualified and competent attorney. The public defender today is not equipped to defend a juvenile when the goal is to keep them in the juvenile system. Not to mention the fact that most public defenders are overburdened. They have a caseload that does not allow them to give individual attention to a case.

Lastly, follow the laws that are passed. All too often children are languishing in jails without the proper status hearings being done. I did far more research than the sources I cited in this paper would indicate. They will all be listed in the reference page for anybody who desires to look things up.

Conclusion

I wish I had more pages to tell you the numerous stories that could be told of children who had their lives ruined because their rights were trampled by a society that simply does not or chooses not to understand them or to care about them. However, since I do not I will simply implore my readers to do their own research into this topic and to get involved. Without people who care about this issue getting involved and voicing their outrage our children will continue to be cast aside and tossed away like we tossed out yesterday's garbage.

REFERENCES:

Colo Rev. Stat. Sec 19-2-210(1)

Commonwealth v A Juvenile 449 N.E. 2d 654

Criminalizing Juvenile Justice: Rules of Procedure for the Juvenile Court (69 Minn. L. Rev. 141 (1984)

Fare v. Michael C. 442 U.S. 707

Feld, Barry C. Juveniles Competence to Exercise Miranda Rights: An Empirical Study of Policy and Practice (91 Minn. L. Rev 26) 2006

Gallegos v. Colorado 370 US 49

Haley v. Ohio 332 US 596

Hillary B. Farber *The Role of the Parent/Guardian in Juvenile Custodial Interrogations: Friend or Foe?* 41 AM. Crim L. Rev. 1277

<http://www.abanet.org/crimjust/juvjus/Adolescence.pdf>

<http://www.christopherpittman.org>

<http://www.justiceforjuveniles.org>

<http://www.websters-online-dictionary.org/definition/juvenile>

Huang, David T. LESS UNEQUAL FOOTING": STATE COURTS' PER SE RULES FOR JUVENILE WAIVERS DURING INTERROGATIONS AND THE CASE FOR THEIR IMPLEMENTATION 86 Cornell L. Rev. 437

Improving the "Kangaroo Courts" 48 Vill L. Rev 629

In Re B.M.B: 955 P.2d 1302

In re Gault 387 U.S. 1, 42 (1967)

In Re W.C. 657 N.E. 2d 908

Juveniles' Waiver of Legal Rights: Confessions, Miranda, and the Right to Counsel, in *Youth on Trial* (T. Grisso & R. Schwartz, eds. 2000).

Krzewinski, Lisa M. But I didn't do it: Protecting the Rights of Juveniles During Interrogation 22 B.C. THIRD WORLD L.J. 355

Lewis v State 288 N.E. 2d 138

McGuire, Robert E., A Proposal To Strengthen Juvenile Miranda Rights: Requiring Parental Presence in Custodial Interrogations 53 Vand. L. Rev. 1355

McMullen, Patrick M. Questioning the questions: The impermissibility of Police Deception in Interrogations of Juveniles 99 NW. U. L. Rev. 971, 973 (2005)

People of the State of Michigan v. Cheatham 551 N.W 2d 355 (1996)

State v. Benoit 490 A.2d 295

State v. Presha 748 A.2d 1108

West v. U.S 399 F.2d 467

W.M. v State 585 So. 2d 979